

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA**

GREGORY NUMANN,

Plaintiff,

v.

FEDERAL BUREAU OF  
INVESTIGATION,

Defendant.

Case No. 3:22-cv-00178-JMK

**ORDER RE MOTION FOR JUDGMENT**

Before the Court at Docket 12, is Plaintiff's "Motion for Summary Judgment." Plaintiff requests judgment in his favor because the "facts are indisputable by law and unrefuted by Defendant."<sup>1</sup> Plaintiff asserts he is entitled to relief because Defendant's failed to file an answer or other responsive pleading before the 60-day deadline. Defendant filed an Answer on April 10, 2023.<sup>2</sup>

Plaintiff has not met his initial burden of production to move for summary judgment;<sup>3</sup> and a court cannot rule on a motion for summary judgment without a response from a defendant.<sup>4</sup> Whereas, when a party fails to plead or otherwise

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<sup>1</sup> Docket 12 at 1.

<sup>2</sup> Docket 11.

<sup>3</sup> Fed. R. Civ. P. 56. *See also Zoslaw v. MCA Distrib. Corp.*, 693 F.2d 870, 883 (9th Cir. 1982) ("moving party bears the burden of showing that there are no genuine issues of material fact"); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 ("[t]he mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient.").

<sup>4</sup> Fed. R. Civ. P. 56; *see also Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (a "court must view the evidence and draw all reasonable inferences in favor of the nonmoving party.").

defend a civil action, default judgment may be sought.<sup>5</sup> Accordingly, Plaintiff's motion is more appropriately construed as a Motion for Default Judgment.

The decision to grant a motion for default judgment is within the discretion of the court.<sup>6</sup> The Ninth Circuit has set forth the following seven factors (the "Eitel factors") that the Court may consider in exercising its discretion: (1) the possibility of prejudice to the plaintiff, (2) the merits of plaintiff's substantive claim, (3) the sufficiency of the complaint, (4) the sum of money at stake in the action; (5) the possibility of a dispute concerning material facts; (6) whether the default was due to excusable neglect, and (7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits.<sup>7</sup>

Defendant has now filed an answer denying the allegations in the Complaint.<sup>8</sup> Although Defendant's filing came after the purported April 4, 2023 deadline, the Court does not find a delay of less than a week prejudicial.

**Therefore, Plaintiff's Motion at Docket 12 is DENIED.**

DATED this 17th day of April, 2023, at Anchorage, Alaska.

/s/ Joshua M. Kindred  
JOSHUA M. KINDRED  
UNITED STATES DISTRICT JUDGE

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<sup>5</sup> See Fed. Rule Civ. Proc. 55.

<sup>6</sup> *PepsiCo, Inc. v. California Security Cans*, 238 F. Supp. 1172, 1174 (C.D. Cal. 2002).

<sup>7</sup> *Eitel v. McCool*, 782 F.2d 1470, 1471–72 (9th Cir. 1986)

<sup>8</sup> Docket 11.